



General Assembly

February Session, 2016

Raised Bill No. 5341

LCO No. 996



Referred to Committee on BANKING

Introduced by:
(BA)

***AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE
APPEALS PROCEDURE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 8-30g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) As used in this section:

4 (1) "Affordable housing development" means a proposed housing
5 development which is (A) assisted housing, or (B) a set-aside
6 development;

7 (2) "Affordable housing application" means any application made to
8 a commission in connection with an affordable housing development
9 by a person who proposes to develop such affordable housing;

10 (3) "Assisted housing" means housing which is receiving, or will
11 receive, financial assistance under any governmental program for the
12 construction or substantial rehabilitation of low and moderate income
13 housing, and any housing occupied by persons receiving rental
14 assistance under chapter 319uu or Section 1437f of Title 42 of the

15 United States Code;

16 (4) "Commission" means a zoning commission, planning
17 commission, planning and zoning commission, zoning board of
18 appeals or municipal agency exercising zoning or planning authority;

19 (5) "Municipality" means any town, city or borough, whether
20 consolidated or unconsolidated;

21 (6) "Set-aside development" means a development in which not less
22 than thirty per cent of the dwelling units will be conveyed by deeds
23 containing covenants or restrictions which shall require that, for at
24 least forty years after the initial occupation of the proposed
25 development, such dwelling units shall be sold or rented at, or below,
26 prices which will preserve the units as housing for which persons and
27 families pay thirty per cent or less of their annual income, where such
28 income is less than or equal to eighty per cent of the median income. In
29 a set-aside development, of the dwelling units conveyed by deeds
30 containing covenants or restrictions, a number of dwelling units equal
31 to not less than fifteen per cent of all dwelling units in the
32 development shall be sold or rented to persons and families whose
33 income is less than or equal to sixty per cent of the median income and
34 the remainder of the dwelling units conveyed by deeds containing
35 covenants or restrictions shall be sold or rented to persons and families
36 whose income is less than or equal to eighty per cent of the median
37 income;

38 (7) "Median income" means, after adjustments for family size, the
39 lesser of the state median income or the area median income for the
40 area in which the municipality containing the affordable housing
41 development is located, as determined by the United States
42 Department of Housing and Urban Development; and

43 (8) "Commissioner" means the Commissioner of Housing.

44 (b) (1) Any person filing an affordable housing application with a

45 commission shall submit, as part of the application, an affordability
46 plan which shall include at least the following: (A) Designation of the
47 person, entity or agency that will be responsible for the duration of any
48 affordability restrictions, for the administration of the affordability
49 plan and its compliance with the income limits and sale price or rental
50 restrictions of this chapter; (B) an affirmative fair housing marketing
51 plan governing the sale or rental of all dwelling units; (C) a sample
52 calculation of the maximum sales prices or rents of the intended
53 affordable dwelling units; (D) a description of the projected sequence
54 in which, within a set-aside development, the affordable dwelling
55 units will be built and offered for occupancy and the general location
56 of such units within the proposed development; and (E) draft zoning
57 regulations, conditions of approvals, deeds, restrictive covenants or
58 lease provisions that will govern the affordable dwelling units.

59 (2) The commissioner shall, within available appropriations, adopt
60 regulations pursuant to chapter 54 regarding the affordability plan.
61 Such regulations may include additional criteria for preparing an
62 affordability plan and shall include: (A) A formula for determining
63 rent levels and sale prices, including establishing maximum allowable
64 down payments to be used in the calculation of maximum allowable
65 sales prices; (B) a clarification of the costs that are to be included when
66 calculating maximum allowed rents and sale prices; (C) a clarification
67 as to how family size and bedroom counts are to be equated in
68 establishing maximum rental and sale prices for the affordable units;
69 and (D) a listing of the considerations to be included in the
70 computation of income under this section.

71 (c) Any commission, by regulation, may require that an affordable
72 housing application seeking a change of zone shall include the
73 submission of a conceptual site plan describing the proposed
74 development's total number of residential units and their arrangement
75 on the property and the proposed development's roads and traffic
76 circulation, sewage disposal and water supply.

77 (d) For any affordable dwelling unit that is rented as part of a set-
78 aside development, if the maximum monthly housing cost, as
79 calculated in accordance with subdivision (6) of subsection (a) of this
80 section, would exceed one hundred per cent of the Section 8 fair
81 market rent as determined by the United States Department of
82 Housing and Urban Development, in the case of units set aside for
83 persons and families whose income is less than or equal to sixty per
84 cent of median income, then such maximum monthly housing cost
85 shall not exceed one hundred per cent of said Section 8 fair market
86 rent. If the maximum monthly housing cost, as calculated in
87 accordance with subdivision (6) of subsection (a) of this section, would
88 exceed one hundred twenty per cent of the Section 8 fair market rent,
89 as determined by the United States Department of Housing and Urban
90 Development, in the case of units set aside for persons and families
91 whose income is less than or equal to eighty per cent of median
92 income, then such maximum monthly housing cost shall not exceed
93 one hundred twenty per cent of such Section 8 fair market rent.

94 (e) For any affordable dwelling unit that is rented in order to
95 comply with the requirements of a set-aside development, no person
96 shall impose on a prospective tenant who is receiving governmental
97 rental assistance a maximum percentage-of-income-for-housing
98 requirement that is more restrictive than the requirement, if any,
99 imposed by such governmental assistance program.

100 (f) Any person whose affordable housing application is denied, or is
101 approved with restrictions which have a substantial adverse impact on
102 the viability of the affordable housing development or the degree of
103 affordability of the affordable dwelling units in a set-aside
104 development, may appeal such decision pursuant to the procedures of
105 this section. Such appeal shall be filed within the time period for filing
106 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
107 shall be made returnable to the superior court for the judicial district
108 where the real property which is the subject of the application is
109 located. Affordable housing appeals, including pretrial motions, shall

110 be heard by a judge assigned by the Chief Court Administrator to hear
111 such appeals. To the extent practicable, efforts shall be made to assign
112 such cases to a small number of judges, sitting in geographically
113 diverse parts of the state, so that a consistent body of expertise can be
114 developed. Unless otherwise ordered by the Chief Court
115 Administrator, such appeals, including pretrial motions, shall be heard
116 by such assigned judges in the judicial district in which such judge is
117 sitting. Appeals taken pursuant to this subsection shall be privileged
118 cases to be heard by the court as soon after the return day as is
119 practicable. Except as otherwise provided in this section, appeals
120 involving an affordable housing application shall proceed in
121 conformance with the provisions of said section 8-8, 8-9, 8-28 or 8-30a,
122 as applicable.

123 (g) Upon an appeal taken under subsection (f) of this section, the
124 burden shall be on the commission to prove, based upon the evidence
125 in the record compiled before such commission, that the decision from
126 which such appeal is taken and the reasons cited for such decision are
127 supported by sufficient evidence in the record. The commission shall
128 also have the burden to prove, based upon the evidence in the record
129 compiled before such commission, that (1) (A) the decision is necessary
130 to protect substantial public interests in health, safety or other matters
131 which the commission may legally consider; (B) such public interests
132 clearly outweigh the need for affordable housing; and (C) such public
133 interests cannot be protected by reasonable changes to the affordable
134 housing development, or (2) (A) the application which was the subject
135 of the decision from which such appeal was taken would locate
136 affordable housing in an area which is zoned for industrial use and
137 which does not permit residential uses; and (B) the development is not
138 assisted housing, as defined in subsection (a) of this section. If the
139 commission does not satisfy its burden of proof under this subsection,
140 the court shall wholly or partly revise, modify, remand or reverse the
141 decision from which the appeal was taken in a manner consistent with
142 the evidence in the record before it.

143 (h) Following a decision by a commission to reject an affordable
144 housing application or to approve an application with restrictions
145 which have a substantial adverse impact on the viability of the
146 affordable housing development or the degree of affordability of the
147 affordable dwelling units, the applicant may, within the period for
148 filing an appeal of such decision, submit to the commission a proposed
149 modification of its proposal responding to some or all of the objections
150 or restrictions articulated by the commission, which shall be treated as
151 an amendment to the original proposal. The day of receipt of such a
152 modification shall be determined in the same manner as the day of
153 receipt is determined for an original application. The filing of such a
154 proposed modification shall stay the period for filing an appeal from
155 the decision of the commission on the original application. The
156 commission shall hold a public hearing on the proposed modification
157 if it held a public hearing on the original application and may hold a
158 public hearing on the proposed modification if it did not hold a public
159 hearing on the original application. The commission shall render a
160 decision on the proposed modification not later than sixty-five days
161 after the receipt of such proposed modification, provided, if, in
162 connection with a modification submitted under this subsection, the
163 applicant applies for a permit for an activity regulated pursuant to
164 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
165 commission on such modification under this subsection would lapse
166 prior to the thirty-fifth day after a decision by an inland wetlands and
167 watercourses agency, the time period for decision by the commission
168 on the modification under this subsection shall be extended to thirty-
169 five days after the decision of such agency. The commission shall issue
170 notice of its decision as provided by law. Failure of the commission to
171 render a decision within said sixty-five days or subsequent extension
172 period permitted by this subsection shall constitute a rejection of the
173 proposed modification. Within the time period for filing an appeal on
174 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
175 as applicable, the applicant may appeal the commission's decision on
176 the original application and the proposed modification in the manner

177 set forth in this section. Nothing in this subsection shall be construed
178 to limit the right of an applicant to appeal the original decision of the
179 commission in the manner set forth in this section without submitting
180 a proposed modification or to limit the issues which may be raised in
181 any appeal under this section.

182 (i) Nothing in this section shall be deemed to preclude any right of
183 appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

184 (j) A commission or its designated authority shall have, with respect
185 to compliance of an affordable housing development with the
186 provisions of this chapter, the same powers and remedies provided to
187 commissions by section 8-12.

188 (k) Notwithstanding the provisions of subsections (a) to (j),
189 inclusive, of this section, the affordable housing appeals procedure
190 established under this section shall not be available if (1) the proposed
191 development which is the subject of the application contains less than
192 four affordable dwelling units, or (2) the real property which is the
193 subject of the application is located in a municipality in which at least
194 ten per cent of all dwelling units in the municipality are [(1)] (A)
195 assisted housing, or [(2)] (B) currently financed by Connecticut
196 Housing Finance Authority mortgages, or [(3)] (C) subject to binding
197 recorded deeds containing covenants or restrictions which require that
198 such dwelling units be sold or rented at, or below, prices which will
199 preserve the units as housing for which persons and families pay thirty
200 per cent or less of income, where such income is less than or equal to
201 eighty per cent of the median income, or [(4)] (D) mobile manufactured
202 homes located in mobile manufactured home parks or legally
203 approved accessory apartments, which homes or apartments are
204 subject to binding recorded deeds containing covenants or restrictions
205 which require that such dwelling units be sold or rented at, or below,
206 prices which will preserve the units as housing for which, for a period
207 of not less than ten years, persons and families pay thirty per cent or
208 less of income, where such income is less than or equal to eighty per

209 cent of the median income. The municipalities meeting the criteria set
210 forth in this subsection shall be listed in the report submitted under
211 section 8-37qqq. As used in subdivision (2) of this subsection,
212 "accessory apartment" means a separate living unit that [(A)] (i) is
213 attached to the main living unit of a house, which house has the
214 external appearance of a single-family residence, [(B)] (ii) has a full
215 kitchen, [(C)] (iii) has a square footage that is not more than thirty per
216 cent of the total square footage of the house, [(D)] (iv) has an internal
217 doorway connecting to the main living unit of the house, [(E)] (v) is not
218 billed separately from such main living unit for utilities, and [(F)] (vi)
219 complies with the building code and health and safety regulations.

220 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
221 inclusive, of this section, the affordable housing appeals procedure
222 established under this section shall not be applicable to an affordable
223 housing application filed with a commission during a moratorium,
224 which shall be the four-year period after (A) a certification of
225 affordable housing project completion issued by the commissioner is
226 published in the Connecticut Law Journal, or (B) after notice of a
227 provisional approval is published pursuant to subdivision (4) of this
228 subsection. Any moratorium that is in effect on October 1, 2002, is
229 extended by one year.

230 (2) Notwithstanding the provisions of this subsection, such
231 moratorium shall not apply to (A) affordable housing applications for
232 assisted housing in which ninety-five per cent of the dwelling units are
233 restricted to persons and families whose income is less than or equal to
234 sixty per cent of median income, (B) other affordable housing
235 applications for assisted housing containing forty or fewer dwelling
236 units, or (C) affordable housing applications which were filed with a
237 commission pursuant to this section prior to the date upon which the
238 moratorium takes effect.

239 (3) Eligible units completed after a moratorium has begun may be
240 counted toward establishing eligibility for a subsequent moratorium.

241 (4) (A) The commissioner shall issue a certificate of affordable
242 housing project completion for the purposes of this subsection upon
243 finding that there has been completed within the municipality one or
244 more affordable housing developments which create housing unit-
245 equivalent points equal to the greater of two per cent of all dwelling
246 units in the municipality, as reported in the most recent United States
247 decennial census, or [seventy-five] fifty housing unit-equivalent points.

248 (B) A municipality may apply for a certificate of affordable housing
249 project completion pursuant to this subsection by applying in writing
250 to the commissioner, and including documentation showing that the
251 municipality has accumulated the required number of points within
252 the applicable time period. Such documentation shall include the
253 location of each dwelling unit being counted, the number of points
254 each dwelling unit has been assigned, and the reason, pursuant to this
255 subsection, for assigning such points to such dwelling unit. Upon
256 receipt of such application, the commissioner shall promptly cause a
257 notice of the filing of the application to be published in the Connecticut
258 Law Journal, stating that public comment on such application shall be
259 accepted by the commissioner for a period of thirty days after the
260 publication of such notice. Not later than ninety days after the receipt
261 of such application, the commissioner shall either approve or reject
262 such application. Such approval or rejection shall be accompanied by a
263 written statement of the reasons for approval or rejection, pursuant to
264 the provisions of this subsection. If the application is approved, the
265 commissioner shall promptly cause a certificate of affordable housing
266 project completion to be published in the Connecticut Law Journal. If
267 the commissioner fails to either approve or reject the application
268 within such ninety-day period, such application shall be deemed
269 provisionally approved, and the municipality may cause notice of such
270 provisional approval to be published in a conspicuous manner in a
271 daily newspaper having general circulation in the municipality, in
272 which case, such moratorium shall take effect upon such publication.
273 The municipality shall send a copy of such notice to the commissioner.

274 Such provisional approval shall remain in effect unless the
275 commissioner subsequently acts upon and rejects the application, in
276 which case the moratorium shall terminate upon notice to the
277 municipality by the commissioner.

278 (5) For purposes of this subsection, "elderly units" are dwelling units
279 whose occupancy is restricted by age and "family units" are dwelling
280 units whose occupancy is not restricted by age.

281 (6) For purposes of this subsection, housing unit-equivalent points
282 shall be determined by the commissioner as follows: (A) No points
283 shall be awarded for a unit unless its occupancy is restricted to persons
284 and families whose income is equal to or less than eighty per cent of
285 median income, except that unrestricted units in a set-aside
286 development shall be awarded one-fourth point each. (B) Family units
287 restricted to persons and families whose income is equal to or less than
288 eighty per cent of median income shall be awarded one point if an
289 ownership unit and one and one-half points if a rental unit. (C) Family
290 units restricted to persons and families whose income is equal to or
291 less than sixty per cent of median income shall be awarded one and
292 one-half points if an ownership unit and two points if a rental unit. (D)
293 Family units restricted to persons and families whose income is equal
294 to or less than forty per cent of median income shall be awarded two
295 points if an ownership unit and two and one-half points if a rental
296 unit. (E) Restricted family units containing at least three bedrooms
297 shall be awarded an additional one-fourth point. (F) Elderly units
298 restricted to persons and families whose income is equal to or less than
299 eighty per cent of median income shall be awarded one-half point. [(F)]
300 (G) If at least sixty per cent of the total restricted units submitted by a
301 municipality as part of an application for a certificate of affordable
302 housing project completion are family units, any elderly units
303 submitted within such application shall be awarded an additional one-
304 half point. (H) Restricted family units located within an approved
305 incentive housing development, as defined in section 8-13m, as
306 amended by this act, shall be awarded an additional one-fourth point.

307 (I) A set-aside development containing family units which are rental
308 units shall be awarded additional points equal to twenty-two per cent
309 of the total points awarded to such development, provided the
310 application for such development was filed with the commission prior
311 to July 6, 1995.

312 (7) Points shall be awarded only for dwelling units which were (A)
313 newly-constructed units in an affordable housing development, as that
314 term was defined at the time of the affordable housing application, for
315 which a certificate of occupancy was issued after July 1, 1990, [or] (B)
316 newly subjected after July 1, 1990, to deeds containing covenants or
317 restrictions which require that, for at least the duration required by
318 subsection (a) of this section for set-aside developments on the date
319 when such covenants or restrictions took effect, such dwelling units
320 shall be sold or rented at, or below, prices which will preserve the
321 units as affordable housing for persons or families whose income does
322 not exceed eighty per cent of median income, or (C) located within an
323 approved incentive housing development, as defined in section 8-13m,
324 as amended by this act.

325 (8) Points shall be subtracted, applying the formula in subdivision
326 (6) of this subsection, for any affordable dwelling unit which, on or
327 after July 1, 1990, was affected by any action taken by a municipality
328 which caused such dwelling unit to cease being counted as an
329 affordable dwelling unit.

330 (9) A newly-constructed unit shall be counted toward a moratorium
331 when it receives a certificate of occupancy. A newly-restricted unit
332 shall be counted toward a moratorium when its deed restriction takes
333 effect.

334 (10) The affordable housing appeals procedure shall be applicable to
335 affordable housing applications filed with a commission after a three-
336 year moratorium expires, except (A) as otherwise provided in
337 subsection (k) of this section, or (B) when sufficient unit-equivalent

338 points have been created within the municipality during one
339 moratorium to qualify for a subsequent moratorium.

340 (11) The commissioner shall, within available appropriations, adopt
341 regulations in accordance with chapter 54 to carry out the purposes of
342 this subsection. Such regulations shall specify the procedure to be
343 followed by a municipality to obtain a moratorium, and shall include
344 the manner in which a municipality is to document the units to be
345 counted toward a moratorium. A municipality may apply for a
346 moratorium in accordance with the provisions of this subsection prior
347 to, as well as after, such regulations are adopted.

348 (m) The commissioner shall, pursuant to regulations adopted in
349 accordance with the provisions of chapter 54, promulgate model deed
350 restrictions which satisfy the requirements of this section. A
351 municipality may waive any fee which would otherwise be required
352 for the filing of any long-term affordability deed restriction on the land
353 records.

354 Sec. 2. Section 8-30g of the general statutes, as amended by section 1
355 of this act, is repealed and the following is substituted in lieu thereof
356 (*Effective October 1, 2021*):

357 (a) As used in this section:

358 (1) "Affordable housing development" means a proposed housing
359 development which is (A) assisted housing, or (B) a set-aside
360 development;

361 (2) "Affordable housing application" means any application made to
362 a commission in connection with an affordable housing development
363 by a person who proposes to develop such affordable housing;

364 (3) "Assisted housing" means housing which is receiving, or will
365 receive, financial assistance under any governmental program for the
366 construction or substantial rehabilitation of low and moderate income

367 housing, and any housing occupied by persons receiving rental
368 assistance under chapter 319uu or Section 1437f of Title 42 of the
369 United States Code;

370 (4) "Commission" means a zoning commission, planning
371 commission, planning and zoning commission, zoning board of
372 appeals or municipal agency exercising zoning or planning authority;

373 (5) "Municipality" means any town, city or borough, whether
374 consolidated or unconsolidated;

375 (6) "Set-aside development" means a development in which not less
376 than thirty per cent of the dwelling units will be conveyed by deeds
377 containing covenants or restrictions which shall require that, for at
378 least forty years after the initial occupation of the proposed
379 development, such dwelling units shall be sold or rented at, or below,
380 prices which will preserve the units as housing for which persons and
381 families pay thirty per cent or less of their annual income, where such
382 income is less than or equal to eighty per cent of the median income. In
383 a set-aside development, of the dwelling units conveyed by deeds
384 containing covenants or restrictions, a number of dwelling units equal
385 to not less than fifteen per cent of all dwelling units in the
386 development shall be sold or rented to persons and families whose
387 income is less than or equal to sixty per cent of the median income and
388 the remainder of the dwelling units conveyed by deeds containing
389 covenants or restrictions shall be sold or rented to persons and families
390 whose income is less than or equal to eighty per cent of the median
391 income;

392 (7) "Median income" means, after adjustments for family size, the
393 lesser of the state median income or the area median income for the
394 area in which the municipality containing the affordable housing
395 development is located, as determined by the United States
396 Department of Housing and Urban Development; and

397 (8) "Commissioner" means the Commissioner of Housing.

398 (b) (1) Any person filing an affordable housing application with a
399 commission shall submit, as part of the application, an affordability
400 plan which shall include at least the following: (A) Designation of the
401 person, entity or agency that will be responsible for the duration of any
402 affordability restrictions, for the administration of the affordability
403 plan and its compliance with the income limits and sale price or rental
404 restrictions of this chapter; (B) an affirmative fair housing marketing
405 plan governing the sale or rental of all dwelling units; (C) a sample
406 calculation of the maximum sales prices or rents of the intended
407 affordable dwelling units; (D) a description of the projected sequence
408 in which, within a set-aside development, the affordable dwelling
409 units will be built and offered for occupancy and the general location
410 of such units within the proposed development; and (E) draft zoning
411 regulations, conditions of approvals, deeds, restrictive covenants or
412 lease provisions that will govern the affordable dwelling units.

413 (2) The commissioner shall, within available appropriations, adopt
414 regulations pursuant to chapter 54 regarding the affordability plan.
415 Such regulations may include additional criteria for preparing an
416 affordability plan and shall include: (A) A formula for determining
417 rent levels and sale prices, including establishing maximum allowable
418 down payments to be used in the calculation of maximum allowable
419 sales prices; (B) a clarification of the costs that are to be included when
420 calculating maximum allowed rents and sale prices; (C) a clarification
421 as to how family size and bedroom counts are to be equated in
422 establishing maximum rental and sale prices for the affordable units;
423 and (D) a listing of the considerations to be included in the
424 computation of income under this section.

425 (c) Any commission, by regulation, may require that an affordable
426 housing application seeking a change of zone shall include the
427 submission of a conceptual site plan describing the proposed
428 development's total number of residential units and their arrangement
429 on the property and the proposed development's roads and traffic
430 circulation, sewage disposal and water supply.

431 (d) For any affordable dwelling unit that is rented as part of a set-
432 aside development, if the maximum monthly housing cost, as
433 calculated in accordance with subdivision (6) of subsection (a) of this
434 section, would exceed one hundred per cent of the Section 8 fair
435 market rent as determined by the United States Department of
436 Housing and Urban Development, in the case of units set aside for
437 persons and families whose income is less than or equal to sixty per
438 cent of median income, then such maximum monthly housing cost
439 shall not exceed one hundred per cent of said Section 8 fair market
440 rent. If the maximum monthly housing cost, as calculated in
441 accordance with subdivision (6) of subsection (a) of this section, would
442 exceed one hundred twenty per cent of the Section 8 fair market rent,
443 as determined by the United States Department of Housing and Urban
444 Development, in the case of units set aside for persons and families
445 whose income is less than or equal to eighty per cent of median
446 income, then such maximum monthly housing cost shall not exceed
447 one hundred twenty per cent of such Section 8 fair market rent.

448 (e) For any affordable dwelling unit that is rented in order to
449 comply with the requirements of a set-aside development, no person
450 shall impose on a prospective tenant who is receiving governmental
451 rental assistance a maximum percentage-of-income-for-housing
452 requirement that is more restrictive than the requirement, if any,
453 imposed by such governmental assistance program.

454 (f) Any person whose affordable housing application is denied, or is
455 approved with restrictions which have a substantial adverse impact on
456 the viability of the affordable housing development or the degree of
457 affordability of the affordable dwelling units in a set-aside
458 development, may appeal such decision pursuant to the procedures of
459 this section. Such appeal shall be filed within the time period for filing
460 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
461 shall be made returnable to the superior court for the judicial district
462 where the real property which is the subject of the application is
463 located. Affordable housing appeals, including pretrial motions, shall

464 be heard by a judge assigned by the Chief Court Administrator to hear
465 such appeals. To the extent practicable, efforts shall be made to assign
466 such cases to a small number of judges, sitting in geographically
467 diverse parts of the state, so that a consistent body of expertise can be
468 developed. Unless otherwise ordered by the Chief Court
469 Administrator, such appeals, including pretrial motions, shall be heard
470 by such assigned judges in the judicial district in which such judge is
471 sitting. Appeals taken pursuant to this subsection shall be privileged
472 cases to be heard by the court as soon after the return day as is
473 practicable. Except as otherwise provided in this section, appeals
474 involving an affordable housing application shall proceed in
475 conformance with the provisions of said section 8-8, 8-9, 8-28 or 8-30a,
476 as applicable.

477 (g) Upon an appeal taken under subsection (f) of this section, the
478 burden shall be on the commission to prove, based upon the evidence
479 in the record compiled before such commission, that the decision from
480 which such appeal is taken and the reasons cited for such decision are
481 supported by sufficient evidence in the record. The commission shall
482 also have the burden to prove, based upon the evidence in the record
483 compiled before such commission, that (1) (A) the decision is necessary
484 to protect substantial public interests in health, safety or other matters
485 which the commission may legally consider; (B) such public interests
486 clearly outweigh the need for affordable housing; and (C) such public
487 interests cannot be protected by reasonable changes to the affordable
488 housing development, or (2) (A) the application which was the subject
489 of the decision from which such appeal was taken would locate
490 affordable housing in an area which is zoned for industrial use and
491 which does not permit residential uses; and (B) the development is not
492 assisted housing, as defined in subsection (a) of this section. If the
493 commission does not satisfy its burden of proof under this subsection,
494 the court shall wholly or partly revise, modify, remand or reverse the
495 decision from which the appeal was taken in a manner consistent with
496 the evidence in the record before it.

497 (h) Following a decision by a commission to reject an affordable
498 housing application or to approve an application with restrictions
499 which have a substantial adverse impact on the viability of the
500 affordable housing development or the degree of affordability of the
501 affordable dwelling units, the applicant may, within the period for
502 filing an appeal of such decision, submit to the commission a proposed
503 modification of its proposal responding to some or all of the objections
504 or restrictions articulated by the commission, which shall be treated as
505 an amendment to the original proposal. The day of receipt of such a
506 modification shall be determined in the same manner as the day of
507 receipt is determined for an original application. The filing of such a
508 proposed modification shall stay the period for filing an appeal from
509 the decision of the commission on the original application. The
510 commission shall hold a public hearing on the proposed modification
511 if it held a public hearing on the original application and may hold a
512 public hearing on the proposed modification if it did not hold a public
513 hearing on the original application. The commission shall render a
514 decision on the proposed modification not later than sixty-five days
515 after the receipt of such proposed modification, provided, if, in
516 connection with a modification submitted under this subsection, the
517 applicant applies for a permit for an activity regulated pursuant to
518 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
519 commission on such modification under this subsection would lapse
520 prior to the thirty-fifth day after a decision by an inland wetlands and
521 watercourses agency, the time period for decision by the commission
522 on the modification under this subsection shall be extended to thirty-
523 five days after the decision of such agency. The commission shall issue
524 notice of its decision as provided by law. Failure of the commission to
525 render a decision within said sixty-five days or subsequent extension
526 period permitted by this subsection shall constitute a rejection of the
527 proposed modification. Within the time period for filing an appeal on
528 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
529 as applicable, the applicant may appeal the commission's decision on
530 the original application and the proposed modification in the manner

531 set forth in this section. Nothing in this subsection shall be construed
532 to limit the right of an applicant to appeal the original decision of the
533 commission in the manner set forth in this section without submitting
534 a proposed modification or to limit the issues which may be raised in
535 any appeal under this section.

536 (i) Nothing in this section shall be deemed to preclude any right of
537 appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

538 (j) A commission or its designated authority shall have, with respect
539 to compliance of an affordable housing development with the
540 provisions of this chapter, the same powers and remedies provided to
541 commissions by section 8-12.

542 (k) Notwithstanding the provisions of subsections (a) to (j),
543 inclusive, of this section, the affordable housing appeals procedure
544 established under this section shall not be available if [(1) the proposed
545 development which is the subject of the application contains less than
546 four affordable dwelling units, or (2)] the real property which is the
547 subject of the application is located in a municipality in which at least
548 ten per cent of all dwelling units in the municipality are [(A)] (1)
549 assisted housing, or [(B)] (2) currently financed by Connecticut
550 Housing Finance Authority mortgages, or [(C)] (3) subject to binding
551 recorded deeds containing covenants or restrictions which require that
552 such dwelling units be sold or rented at, or below, prices which will
553 preserve the units as housing for which persons and families pay thirty
554 per cent or less of income, where such income is less than or equal to
555 eighty per cent of the median income, or [(D)] (4) mobile manufactured
556 homes located in mobile manufactured home parks or legally
557 approved accessory apartments, which homes or apartments are
558 subject to binding recorded deeds containing covenants or restrictions
559 which require that such dwelling units be sold or rented at, or below,
560 prices which will preserve the units as housing for which, for a period
561 of not less than ten years, persons and families pay thirty per cent or
562 less of income, where such income is less than or equal to eighty per

cent of the median income. The municipalities meeting the criteria set forth in this subsection shall be listed in the report submitted under section 8-37qqq. As used in [subdivision (2) of] this subsection, "accessory apartment" means a separate living unit that [(i)] (A) is attached to the main living unit of a house, which house has the external appearance of a single-family residence, [(ii)] (B) has a full kitchen, [(iii)] (C) has a square footage that is not more than thirty per cent of the total square footage of the house, [(iv)] (D) has an internal doorway connecting to the main living unit of the house, [(v)] (E) is not billed separately from such main living unit for utilities, and [(vi)] (F) complies with the building code and health and safety regulations.

(l) (1) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be applicable to an affordable housing application filed with a commission during a moratorium, which shall be the four-year period after (A) a certification of affordable housing project completion issued by the commissioner is published in the Connecticut Law Journal, or (B) after notice of a provisional approval is published pursuant to subdivision (4) of this subsection. Any moratorium that is in effect on October 1, 2002, is extended by one year.

(2) Notwithstanding the provisions of this subsection, such moratorium shall not apply to (A) affordable housing applications for assisted housing in which ninety-five per cent of the dwelling units are restricted to persons and families whose income is less than or equal to sixty per cent of median income, (B) other affordable housing applications for assisted housing containing forty or fewer dwelling units, or (C) affordable housing applications which were filed with a commission pursuant to this section prior to the date upon which the moratorium takes effect.

(3) Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.

595 (4) (A) The commissioner shall issue a certificate of affordable
596 housing project completion for the purposes of this subsection upon
597 finding that there has been completed within the municipality one or
598 more affordable housing developments which create housing unit-
599 equivalent points equal to the greater of two per cent of all dwelling
600 units in the municipality, as reported in the most recent United States
601 decennial census, or [fifty] seventy-five housing unit-equivalent points.

602 (B) A municipality may apply for a certificate of affordable housing
603 project completion pursuant to this subsection by applying in writing
604 to the commissioner, and including documentation showing that the
605 municipality has accumulated the required number of points within
606 the applicable time period. Such documentation shall include the
607 location of each dwelling unit being counted, the number of points
608 each dwelling unit has been assigned, and the reason, pursuant to this
609 subsection, for assigning such points to such dwelling unit. Upon
610 receipt of such application, the commissioner shall promptly cause a
611 notice of the filing of the application to be published in the Connecticut
612 Law Journal, stating that public comment on such application shall be
613 accepted by the commissioner for a period of thirty days after the
614 publication of such notice. Not later than ninety days after the receipt
615 of such application, the commissioner shall either approve or reject
616 such application. Such approval or rejection shall be accompanied by a
617 written statement of the reasons for approval or rejection, pursuant to
618 the provisions of this subsection. If the application is approved, the
619 commissioner shall promptly cause a certificate of affordable housing
620 project completion to be published in the Connecticut Law Journal. If
621 the commissioner fails to either approve or reject the application
622 within such ninety-day period, such application shall be deemed
623 provisionally approved, and the municipality may cause notice of such
624 provisional approval to be published in a conspicuous manner in a
625 daily newspaper having general circulation in the municipality, in
626 which case, such moratorium shall take effect upon such publication.
627 The municipality shall send a copy of such notice to the commissioner.

628 Such provisional approval shall remain in effect unless the
629 commissioner subsequently acts upon and rejects the application, in
630 which case the moratorium shall terminate upon notice to the
631 municipality by the commissioner.

632 (5) For purposes of this subsection, "elderly units" are dwelling units
633 whose occupancy is restricted by age and "family units" are dwelling
634 units whose occupancy is not restricted by age.

635 (6) For purposes of this subsection, housing unit-equivalent points
636 shall be determined by the commissioner as follows: (A) No points
637 shall be awarded for a unit unless its occupancy is restricted to persons
638 and families whose income is equal to or less than eighty per cent of
639 median income, except that unrestricted units in a set-aside
640 development shall be awarded one-fourth point each. (B) Family units
641 restricted to persons and families whose income is equal to or less than
642 eighty per cent of median income shall be awarded one point if an
643 ownership unit and one and one-half points if a rental unit. (C) Family
644 units restricted to persons and families whose income is equal to or
645 less than sixty per cent of median income shall be awarded one and
646 one-half points if an ownership unit and two points if a rental unit. (D)
647 Family units restricted to persons and families whose income is equal
648 to or less than forty per cent of median income shall be awarded two
649 points if an ownership unit and two and one-half points if a rental
650 unit. (E) [Restricted family units containing at least three bedrooms
651 shall be awarded an additional one-fourth point. (F)] Elderly units
652 restricted to persons and families whose income is equal to or less than
653 eighty per cent of median income shall be awarded one-half point. (F)
654 [(G) If at least sixty per cent of the total restricted units submitted by a
655 municipality as part of an application for a certificate of affordable
656 housing project completion are family units, any elderly units
657 submitted within such application shall be awarded an additional one-
658 half point. (H) Restricted family units located within an approved
659 incentive housing development, as defined in section 8-13m, as
660 amended by this act, shall be awarded an additional one-fourth point.

661 (I)] A set-aside development containing family units which are rental
662 units shall be awarded additional points equal to twenty-two per cent
663 of the total points awarded to such development, provided the
664 application for such development was filed with the commission prior
665 to July 6, 1995.

666 (7) Points shall be awarded only for dwelling units which were (A)
667 newly-constructed units in an affordable housing development, as that
668 term was defined at the time of the affordable housing application, for
669 which a certificate of occupancy was issued after July 1, 1990, or (B)
670 newly subjected after July 1, 1990, to deeds containing covenants or
671 restrictions which require that, for at least the duration required by
672 subsection (a) of this section for set-aside developments on the date
673 when such covenants or restrictions took effect, such dwelling units
674 shall be sold or rented at, or below, prices which will preserve the
675 units as affordable housing for persons or families whose income does
676 not exceed eighty per cent of median income. [or (C) located within
677 an approved incentive housing development, as defined in section 8-
678 13m, as amended by this act.]

679 (8) Points shall be subtracted, applying the formula in subdivision
680 (6) of this subsection, for any affordable dwelling unit which, on or
681 after July 1, 1990, was affected by any action taken by a municipality
682 which caused such dwelling unit to cease being counted as an
683 affordable dwelling unit.

684 (9) A newly-constructed unit shall be counted toward a moratorium
685 when it receives a certificate of occupancy. A newly-restricted unit
686 shall be counted toward a moratorium when its deed restriction takes
687 effect.

688 (10) The affordable housing appeals procedure shall be applicable to
689 affordable housing applications filed with a commission after a three-
690 year moratorium expires, except (A) as otherwise provided in
691 subsection (k) of this section, or (B) when sufficient unit-equivalent

692 points have been created within the municipality during one
693 moratorium to qualify for a subsequent moratorium.

694 (11) The commissioner shall, within available appropriations, adopt
695 regulations in accordance with chapter 54 to carry out the purposes of
696 this subsection. Such regulations shall specify the procedure to be
697 followed by a municipality to obtain a moratorium, and shall include
698 the manner in which a municipality is to document the units to be
699 counted toward a moratorium. A municipality may apply for a
700 moratorium in accordance with the provisions of this subsection prior
701 to, as well as after, such regulations are adopted.

702 (m) The commissioner shall, pursuant to regulations adopted in
703 accordance with the provisions of chapter 54, promulgate model deed
704 restrictions which satisfy the requirements of this section. A
705 municipality may waive any fee which would otherwise be required
706 for the filing of any long-term affordability deed restriction on the land
707 records.

708 Sec. 3. Subdivision (12) of section 8-13m of the general statutes is
709 repealed and the following is substituted in lieu thereof (*Effective*
710 *October 1, 2016, and applicable to any final determination of eligibility for an*
711 *incentive housing zone or any grant that has not yet been approved under*
712 *section 8-13x of the general statutes as of October 1, 2015*):

713 (12) "Median income" means, after adjustments for household size,
714 the lessor of the state median income or the area median income as
715 determined by the United States Department of Housing and Urban
716 Development for the municipality in which an approved incentive
717 housing zone or development is located.

718 Sec. 4. Subdivision (12) of section 8-13m of the general statutes, as
719 amended by section 3 of this act, is repealed and the following is
720 substituted in lieu thereof (*Effective October 1, 2021, and applicable to any*
721 *final determination of eligibility for an incentive housing zone or any grant*
722 *that has not yet been approved under section 8-13x of the general statutes as*

723 of October 1, 2021):

724 (12) "Median income" means, after adjustments for household size,
 725 [the lessor of the state median income or] the area median income as
 726 determined by the United States Department of Housing and Urban
 727 Development for the municipality in which an approved incentive
 728 housing zone or development is located.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	8-30g
Sec. 2	October 1, 2021	8-30g
Sec. 3	October 1, 2016, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2015	8-13m(12)
Sec. 4	October 1, 2021, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2021	8-13m(12)

Statement of Purpose:

To reduce the instances in which an affordable housing developer can appeal a municipality's rejection of an affordable housing project and to expand the types of housing that allow a municipality to qualify for an affordable housing moratorium.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]